

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

KEVIN P. SMITH,

Plaintiff,

Case # 17-CV-1226-FPG

v.

ORDER DISMISSING CASE

UNITED STATES, et al.,

Defendants.

INTRODUCTION

On November 27, 2017, *pro se* Plaintiff Kevin P. Smith filed this action against Defendants the United States, Westwego Police, Big L's Building Materials, Home Depot, Sears Corporate Office, J.C. Penney, Greece Embassy, Cellino & Barnes, Volkswagen, Ellicott Development, Red Roof Inn, and Carl Paladino.¹ ECF No. 1. Plaintiff paid the \$400.00 filing fee. By Order dated March 12, 2018, the Court gave Plaintiff until April 12, 2018 to demonstrate good cause for failing to timely serve Defendants. ECF No. 12.

DISCUSSION

Pursuant to Federal Rule of Civil Procedure 4(m), Plaintiff was supposed to serve Defendants within 90 days after he filed his Complaint, *i.e.*, by February 26, 2018. *See* Fed. R. Civ. P. 4(m); *see also* Fed. R. Civ. P. 4(c)(1) (noting that “[t]he plaintiff is responsible for having the summons and complaint served within the time allowed by Rule 4(m)”). “If a defendant is not served within 90 days after the complaint is filed, the court—on motion or on its own after notice to the plaintiff—must dismiss the action without prejudice against that defendant or order that service be made within a specified time.” Fed. R. Civ. P. 4(m).

¹ Three days after he filed the Complaint in this action, Plaintiff filed a new action that appeared nearly identical to this one. *See* Case # 17-CV-1245-FPG. On January 30, 2018, the Court consolidated these actions pursuant to Federal Rule of Civil Procedure 42(a)(2). *Id.* at ECF No. 13. Case # 17-CV-1245-FPG was closed and all docketing now occurs on case # 17-CV-1226-FPG.

Here, although Plaintiff filed multiple documents since he opened this case, including several “mail receipts” (*see* Case # 17-CV-1245-FPG, ECF No. 3), he has not proved service to the Court and there is no indication that any Defendant has been served. *See* Fed. R. Civ. P. 4(l) (noting that “[u]nless service is waived, proof of service must be made to the court” by affidavit). Since the Court’s March 12, 2018 Order, Plaintiff has filed eight “Amendment Sheets,” all of which are entirely incoherent and illegible, and none of which prove service or demonstrate good cause for failing to do so.

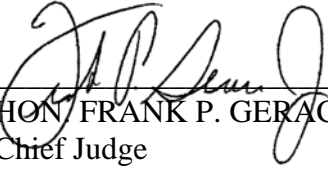
Because Defendants were not served within 90 days after Plaintiff filed his Complaint, the Court provided notice to Plaintiff of this defect, and Plaintiff failed to respond, this action is dismissed without prejudice pursuant to Rule 4(m).

CONCLUSION

This case is **DISMISSED WITHOUT PREJUDICE** due to Plaintiff’s failure to timely serve Defendants. The Clerk of Court is directed to close this case.

IT IS SO ORDERED.

Dated: April 26, 2018
Rochester, New York



HON. FRANK P. GERACI, JR.
Chief Judge
United States District Court